

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CoxCom, Inc.)	
d/b/a Cox Communications New England)	File No. CSB-A-0666
)	
Appeal of Local Rate Order of the Massachusetts)	
Department of Telecommunications and Energy)	
For the Town of Holland, MA (CUID MA0321))	

MEMORANDUM OPINION AND ORDER

Adopted: March 28, 2003

Released: April 3, 2003

By the Commission:

I. INTRODUCTION

1. On May 29, 2002, the Massachusetts Department of Telecommunications and Energy (“DTE”) filed an Application for Review of a Media Bureau Order that granted an appeal of a local rate order filed by CoxCom, Inc. d/b/a Cox Communications New England (“Cox”). The Order held that Cox, the franchised cable operator serving Holland, Massachusetts (“Holland”), had properly completed FCC Form 1240 (“Form 1240”), especially the treatment of its “true-up” adjustment in computing its Basic Service Tier (“BST”) rate.¹ On June 12, 2002, Cox filed an opposition to this Application for Review. DTE filed a reply to Cox’s opposition. After reviewing the record in this case and for the following reasons, we deny DTE’s Application for Review.

II. BACKGROUND

2. On March 29, 2001, DTE’s Cable Television Division (“Cable Division”) issued a rate order that rejected Cox’s completion of Form 1240 because of its treatment of the true-up adjustment, which was used to compute proposed BST programming and equipment and installation rates for Holland. Cox appealed the Cable Division’s rate order to the DTE Commission, which affirmed the Cable Division’s rate order. On May 29, 2001, Cox filed an appeal with the former Cable Services Bureau, now the Media Bureau (“Bureau”), and DTE filed an opposition. The Bureau granted Cox’s appeal. It held that DTE’s decision was not reasonable and remanded the case to the DTE for further consideration.

3. DTE seeks review of the Bureau Order reversing DTE’s decision that Cox improperly accounted for its true-up adjustments on Form 1240. DTE asserts that the Bureau failed to apply the appropriate standard of review in reversing DTE’s decision and the Bureau Order conflicts with Commission rules and policy. DTE also asserts that its decision was reasonable and consistent with Commission rules, precedent, and policy.

¹ 17 FCC Rcd 7931 (2002). A “true-up” adjustment is an adjustment or correction of projected cost increases from a prior year done in an annual computation of basic service rates by every cable system without effective competition.

4. We affirm the Bureau Order and deny DTE's Application for Review. The facts, applicable law, and the Bureau's analysis were fully set forth in the underlying decision. The Bureau granted Cox's appeal based on the requirements of Form 1240 and related instructions and DTE has advanced no reason in its Application for Review why the Commission should overturn the Bureau's Order.

III. DISCUSSION

5. DTE's Application for Review restates the arguments raised and addressed at the Bureau level. DTE's Application for Review does not assert that the Bureau Order failed to address the issues it had raised, but rather argues that the Bureau Order is incorrect based upon DTE's interpretation of Commission policy, precedent, and law. Cox opposes DTE's Application for Review and agrees with the Bureau's decision.

6. DTE initially argues that the Bureau Order should be overturned because the Commission does not conduct *de novo* reviews of rate orders issued by franchising authorities and should defer to a local authority's decisions if there is a reasonable basis for the decision. DTE also argues that the Bureau Order has established a "rebuttable presumption in favor of the operator." Cox argues that the Bureau Order was consistent with the Commission's rules and policies and that DTE has failed to demonstrate any procedural error or conflict with statute, regulation, case precedent, or established Commission policy. While it is true that the Commission does not conduct *de novo* reviews of local rate orders, the Commission is responsible for ensuring the uniform application of its rate regulations.² The Commission hears local rate appeals to determine whether the franchising authorities have acted in a manner consistent with the requirements of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act").³ The Commission has clarified that it will defer to the local authority's decision as long as there is a reasonable basis for its decision. This standard of review applies with respect to a franchising authority's interpretation of ambiguities, including FCC forms.⁴ After reviewing DTE's decision, the Bureau concluded that there was no reasonable basis for DTE's decision that Cox had improperly completed Form 1240. We find that the Bureau used the appropriate standard of review.⁵

7. DTE also argues that the Bureau's Order is incorrect because only the actual amount to be passed on to subscribers in higher rates can be placed on Line H14 (Amount of True-Up Adjustment Claimed for This Projected Period) of FCC Form 1240. Cox asserts that it has the discretion to charge subscribers the maximum permitted rate ("MPR") or something less. The Bureau concluded that there was no reasonable basis for DTE's decision that Cox had improperly completed Form 1240 because an operator has discretion whether to pass through unrecovered accrued costs reflected in the true-up adjustment and discretion whether to recover amounts included in other rate segments when setting its subscriber rates.⁶ The Bureau explicitly rejected DTE's assumption that true-up adjustments have not been passed through to subscribers just because the MPR exceeds the actual rate charged subscribers.⁷ The Bureau stated that the regulatory restrictions on setting subscriber rates prohibit the rates from exceeding the MPR, but they do not require the operator to raise its rates to the MPR.⁸ The Bureau further stated that DTE's interpretation would likely result in a cable operator's increasing its rates, which

² *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5729-30 para. 147 (1993).

³ Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. §§ 521 et seq. (1992). See also 47 C.F.R. § 76.944.

⁴ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation and Buy-Through Prohibition*, 9 FCC Rcd 4316, 4346 (1994).

⁵ *Id.*

⁶ 17 FCC Rcd 7931, 7935 (2002).

⁷ *Id.* at 7935.

⁸ *Id.*

could theoretically result in a lower true-up, but not necessarily lower rates for subscribers.⁹ Thus, the Bureau concluded that DTE's decision was not consistent with the Cable Act. We find that the Bureau correctly concluded that cable operators have discretion to charge subscribers an amount less than the maximum MPR. The Bureau's decision was consistent with Commission and Bureau precedent.¹⁰ We therefore deny DTE's Application for Review.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Application for Review filed by the Massachusetts Department of Telecommunications and Energy of the Media Bureau's Memorandum Opinion and Order on June 13, 2002 **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹ *Id.* at 7936.

¹⁰ See FCC Form 1240; FCC Form 1240 Instructions; section 76.922(e)(2)(ii) of the Commission's Rules, 47 C.F.R. § 76.922(e)(ii); *Falcon Telecable*, 15 FCC Rcd 52, 54 ¶ 5 (1999); *Mr. Richard D. Treich*, 12 FCC Rcd 10340, 10340-41 (1997); *Media General Cable of Fairfax County, Inc.*, 12 FCC Rcd 17424, 17431-32 ¶ 22 (1997), review granted in part and denied in part, 16 FCC Rcd 15617 (2001) (review granted on procedural point); section 76.933(g) of the Commission's Rules, 47 C.F.R. § 76.933(g); *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Thirteenth Order on Reconsideration*, 11 FCC Rcd 388, 392 ¶ 9; section 76.1603(b) – (d) of the Commission's Rules, 47 C.F.R. § 76.1603(b) – (d); section 76.933(g)(3) of the Commission's Rules, 47 C.F.R. § 76.933(g)(3).